

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

1. The petitioner is a single woman who lives in a mobile home unit which she owns jointly with a friend who also lives in the unit. The mortgage, the title papers, the insurance policy and the tax records are in their joint names. All of the bills for the utilities in the mobile home, including electricity, telephone, cable and kerosene for the heating system, are in their joint names. They also are listed as joint renters of their mobile home lot. Payments for all shelter costs are split equally between the two

residents. Each owner has a separate bedroom but the kitchen, living room and bath are shared by both. The petitioner and her co-resident take care of their own personal bills such as food and car expenses.

2. The petitioner has been living on General Assistance all winter while awaiting a decision on her claim for disability benefits. She was determined to be disabled by the Social Security Administration and was awarded benefits on June 1, 2000 which were made retroactive to October 1, 1999.

3. The petitioner applied for assistance with her fuel payments on November 9, 1999. When she explained her housing situation, she was told that she would have to supply the co-owner's income information in order to have her eligibility determined because they were operating as a single economic unit and purchased fuel together. The petitioner refused to provide that information because only she was seeking help with payment for the fuel, not her co-owner. Based on that refusal, the petitioner was denied assistance on December 22, 1999.

4. The petitioner appealed that denial and spent a good deal of time over the winter attempting to secure legal representation for her hearing which she was ultimately unsuccessful in obtaining. When it was revealed during the

hearing, which went forward on June 2, 2000, that the petitioner had been determined to be disabled, the Chief of the heating fuel office offered to reconsider the decision if the petitioner could put forth evidence that her co-owner was required to live in the mobile home unit with her because she was unable to live alone for medical reasons. In that event, he stated that he would not be required to count her co-owner's income. The petitioner offered that she had been depressed but offered no further information from her medical providers, as she was invited to do, that her health necessitated having another person live with her to provide personal care or housekeeping services.

ORDER

The decision of the Department is affirmed.

REASONS

The regulations governing the supplemental fuel program require the assessment of income and resources of all persons included in the "fuel household" to see if they exceed maximums for the program. W.A.M. 2901.2(2). The "fuel household" is "one or more persons who reside in the same living unit as a single economic unit who, in common,

customarily purchase energy for home heating fuel or who, in common, make undesignated payments for energy for home heating fuel in the form of rent." W.A.M. 2901.1(4). This definition is taken directly from the statute defining "household" in the state statute at 33 V.S.A. § 2604(a) which in turn is copied from the definition in the federal program ("LIHEAP") which authorizes assistance payments to states for fuel benefits. 42 U.S.C. § 8622(5).¹

There is no question that the two co-residents here purchase their home heating fuel in common. The only issue is whether they live as a "single economic unit". That phrase is not defined in the regulations but has been interpreted by the Vermont Supreme Court as meaning "that the common living expenses are shared from the income and resources of all members and that the basic needs of all members are provided without regard to their ability or willingness to contribute." Dutton, et al. v. Department of Social Welfare, 168 Vt. 281, 286 (1998). The petitioner and her co-resident do have an agreement whereby each of them pays equal shares for all the bills. However, they have also structured their shelter

¹ This statute and these regulations were amended to conform with federal requirements pursuant to a court order in a lawsuit brought by households with boarders and the boarders themselves challenging regulations requiring the inclusion of income and resources of the other when

situation so that each of them is jointly and severally liable for all of the shelter costs should the other become unable or unwilling to contribute. For example, if the petitioner cannot come up with her half of the mortgage payment, the payment still must be made and her co-resident is responsible for making it because the promissory note is also in his name. The same is true for the taxes, insurance, utility payments and lot rent. Certainly for purposes of providing their shelter, a basic need, the petitioner and her co-resident have become a single economic unit under the above definition.

The Department's regulations do provide in certain enumerated circumstances that persons who live together as an economic unit can nevertheless be considered as separate fuel households:

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c. Other Persons Residing in the Living Unit (Including Relatives Not Addressed in a. or b. above)

All other persons residing in the living unit are included in the applicant's fuel household unless the head of household provides reasonable evidence (see Section 2905) that the person qualifies for exclusion from the fuel household based on one or more of the following four criteria:

- (1) the person is a roomer (or roomer/boarder who rents separate living quarters in the

determining eligibility for fuel assistance. See Dutton v. Department of Social Welfare, 168 Vt. 281 (1998). .

living unit and pays reasonable room rent (compensation) to the head of household, or his or her spouse, for the separate living quarters; or

- (2) the person provides reasonable compensation for his or her separate living quarters in the form of caretaker or companionship services, which shall not be measured by a monetary standard, that the person provides to the elderly or disabled head of household or his or her elderly or disabled spouse.
- (3) the person provides medically necessary personal care or homemaker services to an elderly or disabled person residing in the living unit, provided that the recipient of these services is not the person's spouse, minor daughter or son, the other parent of the person's minor daughter or son, or the minor daughter or son of the other parent; or
- (4) the person is in the custody of and placed in foster care in the living unit by the Department of Social and Rehabilitation Services, or the person has been placed in the living unit by or through a program administered by the Department of Developmental and Mental Health Services.

d. Roomer (or Roomer/Boarder) Fuel Household (for purposes of qualifying for receipt of fuel assistance benefits)

A roomer (or roomer/boarder) fuel household that occupies, exclusively, one or more rooms within a living unit as separate living quarters must pay reasonable room rent (compensation), weekly or monthly, for its separate living quarters in order to be potentially eligible for fuel assistance. In-kind payment for the separate living quarters, regardless of its equivalent value, does not constitute reasonable room rent. In addition, the roomer (or roomer/boarder) fuel household's total countable income and total countable resources shall

not exceed the allowable maximums (Welfare
Procedures Manual P.2905 A).

. . .

W.A.M. 2901.2

The petitioner argues that she and her co-resident meet the definition of joint roomers or boarders and should therefore fall under the exemptions for those categories. The facts of her situation, however, do not support such a claim and the burden is clearly on her under the regulations to show that she meets the exception. W.A.M. 2905. There is no person in the household who takes a subordinate role and is merely paying the other to live in a separate space. Neither is there a person who claims a superior right to occupy the premises and collect rent from the other. On the contrary, each of these persons is equal in terms of his or her claim of ownership of the dwelling and each is equally responsible for paying all their joint shelter bills to third parties. Given these facts, it cannot be found that the petitioner and her co-resident meet the exception for roomers.

The petitioner has presented no other evidence from which it could be concluded that she meets any other exception listed above. The burden is clearly on her under the fuel regulations to provide reasonable evidence that her co-

resident should be excluded from her fuel household in order to avoid providing information on his income and assets.

W.A.M. 2905(a). Although the petitioner's shared housing arrangement is a resourceful attempt by a person with a very limited income to provide decent housing for herself (and occasionally for her three children with whom she has visitation rights), it puts her in a difficult and perhaps disqualifying situation for purposes of fuel program eligibility.² Absent a restructuring of her situation in which one of the two living in the household becomes a bona fide boarder or her co-resident begins to provide the petitioner with some medically necessary personal care or homemaker services, it appears unlikely that the petitioner will ever be able to avoid the inclusion of her co-resident's income and resources in her eligibility calculation for fuel assistance. As the Department correctly required the petitioner to provide income and resource information on her co-resident and as she refused to provide such information,

² It is not possible to tell if she is actually eligible for assistance until she agrees to provide financial information on her co-resident.

the Department was correct in denying her application for non-cooperation. See W.A.M. 2905(f).

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